

## DEPARTMENT OF STATE REVENUE

04-20140357P.LOF

**Letter of Findings Number: 04-20140357P**  
**Tax Administration**  
**For Tax Year 2010, 2011, and 2012**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.

**ISSUE****I. Tax Administration - Negligence Penalty.**

**Authority:** IC § 6-2.5-5-3; IC § 6-8.1-5-1; IC § 6-8.1-10-2.1; Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); [45 IAC 2.2-5-8](#); [45 IAC 15-11-2](#).

Taxpayer protests the imposition of ten percent negligence penalties.

**STATEMENT OF FACTS**

Taxpayer is an S corporation and manufactures wood products from bio-mass material. It collects scrap wood and wood by-products from other companies and manufactures landscaping materials, animal bedding, topsoil, potting soil, and wood fuels. The Indiana Department of Revenue ("Department") conducted an audit for tax years 2010, 2011, and 2012. As a result, the Department imposed proposed assessments of base tax, penalties, and interest. Taxpayer protests the imposition of the penalties. An administrative hearing was held, and this Letter of Findings results. Additional facts will be provided as needed.

**I. Tax Administration - Negligence Penalty.****DISCUSSION**

Taxpayer protests the Department's proposed assessment of penalties. All tax assessments are prima facie evidence that the Department's claim for the tax is valid, and the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). The issue is whether Taxpayer met its burden to prove the assessment is incorrect.

A taxpayer who "incurs, upon examination by the department, a deficiency that is due to negligence . . . is subject to a penalty." IC § 6-8.1-10-2.1(a). The Department shall waive the penalty if the taxpayer demonstrates that the failure to pay the outstanding taxes "was due to reasonable cause and not due to willful neglect." IC § 6-8.1-10-2.1(d); see also [45 IAC 15-11-2](#). The taxpayer may demonstrate reasonable cause by showing affirmatively that it used "ordinary business care and prudence" in not paying the outstanding taxes. However, a taxpayer's ignorance of Indiana's tax laws does not constitute reasonable cause. Whether a taxpayer demonstrates reasonable cause for penalty purposes is a fact-sensitive question and determined on a case-by-case basis. [45 IAC 15-11-2](#)(b) and (c).

Taxpayer states that its use tax accrual system was based on a previous audit conducted by the Department for tax years 2007, 2008, and 2009. In its protest letter, Taxpayer states that the "YR2013 audit differed significantly from the previous auditor [sic] on which expenses should be considered for use tax." Taxpayer provided a copy of the audit report from the previous audit for use in comparison.

Both audit reports made use tax adjustments based on whether an item is directly used in direct production, in that the item is essential and integral part of an integrated process which produces tangible personal property. See IC § 6-2.5-5-3; [45 IAC 2.2-5-8](#). Both audit reports found that some of Taxpayer's equipment was used in direct production part of the time, and thus partially taxable. It is unclear whether the use of the equipment was identical in all of the audit years. In any case, the auditors consistently applied Indiana statutes and regulations.

Taxpayer states that "[t]he 2009 audit found no sales tax issues, but in 2013 [Taxpayer's] liability increased to \$5,457." Taxpayer identified the issue that increased its sales tax as "sales to horse farms." Taxpayer indicates that it has "always sold bedding to horse farms," and "assumed [that] a sale to any farm was tax exempt in

Indiana." Thus, Taxpayer assumed sales to horse farms were exempt from tax without obtaining exemption certificates from the horse farm. A taxpayer's ignorance of Indiana's tax laws does not constitute reasonable cause. See [45 IAC 15-11-2](#).

Taxpayer has not demonstrated reasonable cause for failure to remit the outstanding tax, and its protest is respectfully denied.

### **FINDING**

Taxpayer's protest is respectfully denied.

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